

<b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203	<b>Docket No.: 65803</b>
<b>AMENDED ORDER</b>	

**THIS MATTER** was heard by the Board of Assessment Appeals on November 10, 2015, James R. Meurer and MaryKay Kelley presiding. Petitioner appeared *pro se*. Respondent was represented by Matthew Niznik, Esq. Petitioner is protesting the 2015 actual value of the subject property.

Subject property is described as follows:

**107 Gentian, Woodland Park, Colorado  
Teller County Schedule Number R0018610**

The subject property is a 1,536 square foot duplex (attached two-unit) with a one-car garage. It was built in 1966 on a 14,810 square foot site in the Tranquil Acres Subdivision.

Respondent assigned a value of \$65,000 for the subject property for tax year 2015. Petitioner is requesting a value of \$14,328.

Petitioner referenced the prior hearing at the Board of Assessment Appeals (“BAA”) on this property for tax year 2013 (Docket No. 62035) at which he appealed the Assessor’s re-classification of the subject from residential to vacant land. At that hearing, Respondent’s witness argued that the improvement was uninhabitable. Respondent’s witness also argued that it was not used commercially, residentially, or agriculturally, added no value to the land, and was, thus, a “minor structure” per Section 39-1-103(14)(c)(II)(A), C.R.S. In response, Petitioner argued that classification had always been residential and referenced Section 39-1-103(5)(a), C.R.S.: “[...] once any property is classified for property tax purposes, it shall remain so classified until such time as its

actual use changes or the assessor discovers that the classification is erroneous.” The BAA, unconvinced that the improvement added no value or was a “minor structure,” agreed with Petitioner and ordered Respondent to re-classify the property as residential for tax year 2013. Although the County reclassified the subject back to residential for 2013, no change was made to the subject’s assigned value of \$14,328 which was based on vacant land classification.

Petitioner requested that value remain the same for tax year 2015 as it was in 2013, describing the structure as uninhabitable and supplying the following additional details about its condition: no heat, no water heater, no appliances, inoperable electrical system, roof needs to be re-shingled, wildlife in residence (rodent, raccoons). Petitioner argued that there had been no change in the condition, use or ownership of the property that would justify an increase from its 2013 value.

Petitioner noted the 821% increase between the 2013 assessed value of \$14,328 and the 2015 original assessed value of \$132,000. On appeal, the Assessor reduced the 2015 value to \$65,000, which, as Petitioner noted, was nevertheless a 410% increase over the past two years. He also noted the Assessor’s newspaper article in which she reported the average Teller County housing value increase of 7%, far lower than his property’s increase. He accused the Assessor of bad-faith retaliation resulting from the outcome of the 2013 BAA hearing.

Petitioner is requesting that the assessed value for tax year 2015 remain the same as it was in tax year 2013 (\$14,328).

Respondent’s witness, Betty M. Clark-Wine, Teller County Assessor, did not conduct an interior inspection but noted the following deferred maintenance: roof, fascia, paint, garage door, deck. She assigned “fair” condition in her appraisal.

Ms. Clark-Wine, testifying that there have been no duplex sales in Teller County within a five-year extended base period, presented a Market Approach with three sets of comparable sales supporting the Board of Equalization’s value of \$65,000. Set One included four single-family detached sales in Tranquil Acres with an adjusted medium price of \$70,812 and a mean of \$71,493. Set Two included three single-family detached sales in Teller County with an adjusted medium price of \$69,475 and a mean of \$74,263. Set Three included four duplex sales in neighboring El Paso County with a range of adjusted sale prices from \$72,117 to \$129,950 and an approximate distance of 25 miles from the subject. Set Three was presented as additional support for Ms. Clark-Wine’s value conclusion of \$65,000.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2015.

Petitioner requested that value remain the same for tax year 2015 as for tax year 2013 because nothing has physically or legally changed with the property to justify an increase in value. The Assessor is bound by statute to re-value all properties bi-annually. Pursuant to Section 39-1-104 (10.2)(a) C.R.S., “a reassessment cycle shall be instituted with each cycle consisting of two full calendar years. At the beginning of each reassessment cycle, the level of value to be used during the reassessment cycle in the determination of actual value of real property in any county of the state as

reflected in the abstract of assessment for each year in the reassessment cycle shall advance by two years over what was used in the previous reassessment cycle ...” The subject’s 2013 value is within a different reassessment cycle than the 2015 value, and the Assessor’s 2015 value determination relied on a different base period.

Moreover, the subject property’s 2013 assigned value of \$14,328 was based on the Assessor’s vacant land classification of the subject. The valuation of the subject was not at issue at the time of the 2013 appeal, and no change was made to the assigned value following the BAA’s order to re-classify the subject property back to a residential classification. The subject property’s 2015 assigned value of \$65,000 was appropriately based on residential classification. The Board is not convinced by Petitioner’s argument that there has been no change in the property condition from 2013 to 2015 tax year. The Assessor’s valuations for the two reassessment years were based on different classifications.

Respondent properly applied the Market Approach in valuing the subject property. The Board finds Set Three to be most indicative of value because it addresses the subject’s two-unit floor plan with independent entries, living rooms, kitchens, and bedrooms/bathrooms. The marketplace for single family detached homes is predominantly owner occupancy, while a duplex offers income potential.

Respondent’s Set Three compares the subject property to duplexes that are in a different area approximately 25 miles distant from the subject. The analysis is derived from MLS data but does not include an adjustment for this locational difference.

The Board finds that the evidence presented is not sufficient to establish the subject property’s value for tax purposes. Accordingly, the Board remands this matter to Teller County for an accurate assessment. *Board of Assessment Appeals v. Sampson*, 105 P.3d 198, 208 (2005) (“... the BAA may properly remand the matter for an accurate assessment by the county, which is charged with the duty of assessing properties in accordance with the statutory mandate in the first instance.”)

The Assessor should apply an accepted market approach to determine the actual value of the subject property for the 2015 tax year by utilizing comparable duplex sales with application of appropriate adjustments for location. The comparable duplex sales may include, but do not need to be limited to, Set Three of Respondent’s comparable sales. To determine a location adjustment for sales located in El Paso County, the Board suggests percentage comparison of average sale prices within the subject property’s defined neighborhood boundaries and the comparable duplex sales’ neighborhood boundaries.

The new assessment shall be completed and provided to Petitioner and the Board of Assessment Appeals by no later than March 15, 2016. Petitioner shall file notice with the Board of Assessment Appeals by no later than April 30, 2016 if Petitioner disagrees with the value determined in the new assessment. Upon receipt of such notice, the Board of Assessment Appeals will set this matter for hearing.

## **APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

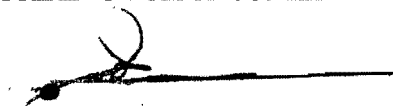
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

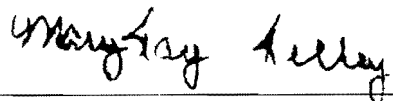
Section 39-8-108(2), C.R.S.

**DATED and MAILED** this 22<sup>nd</sup> day of February, 2016.

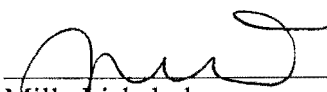


### **BOARD OF ASSESSMENT APPEALS**

  
\_\_\_\_\_  
- James R. Meurer

  
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MaryKay Kelley

I hereby certify that this is a true  
and correct copy of the decision of  
the Board of Assessment Appeals.

  
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Milla Lishchuk